

DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR

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SACRAMENTO, CA 95814-7243



January 16, 2002

The Honorable Michael Machado
California State Senate
State Capitol, Room 3086
Sacramento, CA 95814

Dear Senator Machado:

Re: SB 728 – Proposed CSEA MOU Ratification Legislation and Post and Bid

In his January 14, 2002, letter concerning SB 728, State Personnel Board's Executive Director Walter Vaughn stated, "Under provisions of the 'post and bid' processes vacant positions in specified state job classes will be filled solely on the basis of seniority." This is absolutely incorrect. DPA and CSEA negotiated a process under which persons selected to fill vacancies must meet all the qualifications of the job as required by the State Personnel Board before they can be selected.

"Post and bid" is not a new concept in state service. The State and other unions have agreed to similar provisions in previous bargaining years and have continued to bargain the issue in current bargaining sessions. Let me reemphasize this point, all "post and bid" provisions that have been agreed to fully comply with existing civil service laws and rules and with practices already in place in other union agreements.

Mr. Vaughn further contends, without citing any evidentiary support, that the process negotiated by CSEA disadvantages minorities and women. At the bargaining table, the union put forth exactly the opposite argument. The negotiated process is intended to assure that objective criteria are used in selection and this benefits minorities and women. The parties' negotiated provisions reinforce California's Constitutional requirement that positions be filled based on identified job requirements and that appointments to those positions be made objectively, utilizing a process consistent with the State Personnel Board's laws and rules. CSEA, the duly elected bargaining representative of the affected employees, argued that upward mobility would be best served by the agreed to provisions.

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The attached discussion document clarifies the State employer's position regarding "post and bid." If you have any questions, please contact me or Luanne Morikawa of my staff at (916) 322-5193.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Morgenstern", with a long, sweeping horizontal line extending from the end of the signature.

Marty Morgenstern
Director

Enclosure

cc: Senator John Burton, President pro Tempore of the Senate
Senator Jim Brulte, Senate Minority Leader
Senator Richard Polanco, Chair, Latino Caucus
Senator Nell Soto, Chair, Senate Public Employment and Retirement Committee
Senator Deirdre Alpert, Chair, Senate Appropriations Committee
Senator Deborah Ortiz
Senate Members, Senate Public Employment and Retirement Committee
Senate Members, Senate Appropriations Committee
Senate Members, Senate Public Employment and Retirement Committee
Assembly Member Robert Hertzberg, Speaker of the Assembly
Assembly Member Herb Wesson, Assembly Speaker-Elect
Assembly Member Dave Cox, Assembly Minority Leader
Assembly Member Roderick Wright, Chair, Legislative Black Caucus
Assembly Member Sally Havice, Chair, Assembly Public Employees, Retirement and Social Security Committee
Assembly Member Carole Migden, Chair, Assembly Appropriations Committee
Assembly Members, Assembly Public Employees, Retirement and Social Security Committee
Assembly Members, Assembly Appropriations Committee
Mike Gotch, Legislative Affairs Secretary, Office of the Governor
Happy Chastain, Deputy Secretary, Legislation, State and Consumer Services Agency
Sherrie Golden, California State Employees Association

**RESPONSE TO STATE PERSONNEL BOARD'S OPPOSITION TO NEGOTIATED POST
AND BID PROVISIONS
DEPARTMENT OF PERSONNEL ADMINISTRATION**

The Department of Personnel Administration for the State of California and the California State Employees Association Local 1000, SEIU, AFL-CIO reached a tentative agreement to establish a pilot program during the term of the new contract (January 2002 – July 2, 2003) to use a "post and bid" process to fill up to 50 percent of the vacant positions in selected classifications in Bargaining Units 1 and 4. A similar pilot process was also negotiated for specific classifications in Bargaining Unit 11. Post and bid processes already exist in Bargaining Unit 6 represented by the California Correctional Peace Officers Association (CCPOA), Bargaining Units 12 and 13 represented by the International Union of Operating Engineers (IUOE), as well as Bargaining Unit 15, also represented by CSEA.

The negotiated post and bid process provides that employees who meet all the qualifications for a particular vacant position may "bid" for the vacancy. Employee eligibility requirements under the new "post and bid" process are those mandated by the State's existing Civil Service process.

To be eligible, employees must meet all legal requirements for the job.

They must either be eligible to transfer into the vacancy in accordance with existing SPB merit system rules or have tested and qualified via the exam process, pursuant to all SPB merit system rules including being immediately reachable on an eligible list. In addition to meeting all of the required qualifications for the posted position, those who bid must possess any educational or certificate requirements, the physical abilities necessary to perform the essential functions of the posted position, and must have an overall satisfactory performance rating in their current position.

The only difference under the new process and the current practice is that once employees meet the civil service requirements, up to 50 percent of vacant positions in the specified classifications must be filled on the basis of years of service with the State, instead of

utilizing the existing interview process that may include subjective criteria. The union expressed concern that the interview process could be used to discriminate against women and minorities.

Mandatory reinstatements, placement of employees subject to layoff, State Restriction of Appointments/Surplus list, reasonable accommodations, ADA, workers' compensation, limited duty, FMLA, hardship transfers and any other appropriate placements are not part of the 50/50 post and bid ratio. The newly negotiated process also does not preclude management from transferring or denying an employee transfer for verifiable security, safety or other job-related reasons. The State may assign/reassign employees where needed under circumstances such as emergencies, reorganizations, budgetary constraints, etc.

Management, using existing procedures, can still fill the remaining 50 percent of the vacancies in the classifications specified in the MOU. In the unlikely event that the negotiated post and bid process did disadvantage minorities or women, management could utilize the remaining 50 percent of the vacancies to remedy the situation. However, it is the hope and expectation of both parties to the agreement that our efforts will enhance upward mobility and merit in state service. As a further safeguard, the agreement calls for a labor-management committee to assure that the post and bid process is working as planned and assessing the need for any corrections or change.